

87-1854

No. 87-

Supreme Court, U.S.
FILED
MAY 12 1988

JOSEPH F. SPANOL, JR.
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

Bill J. Cory,

Petitioner,

v.

Standard Federal Savings and
Loan Association, Marvin R. Lang,
and Robert W. Zaugg,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Bill J. Cory, Pro Se
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2574 Chain Bridge Road
Vienna, Virginia 22180
(703) 938-3589



QUESTION PRESENTED

Whether the court of appeals applied the proper standard in determining that forty-three (43) acts of alleged wire and mail fraud over a forty (40) month period failed to constitute a "pattern of racketeering activity" under RICO as defined by Title 18 U.S.C. § 1961(5).

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Opinions below	2
Jurisdiction	2
Statutory provisions involved	3
Statement of case	3
Reasons for granting the writ	7
I. The RICO pattern should be standardized among the federal circuits	7
II. The courts "pattern" requirement conflicts with the terms of the RICO statute	15
III. The "pattern of Racketeering Activity" does not require a scheme or episode	15
Conclusion	23
Appendix A	A-1
Appendix B	B-1

TABLE OF AUTHORITIES

Cases:

<i>Agency Holding Corp. v. Malley-Duff & Associates</i> , 107 S. Ct. 2759 (1987)	10
<i>Bank of America v. Touche Ross & Co.</i> , 782 F. 2d 966 (11th Cir. 1986)	10
<i>Carpenter v. United States</i> , 484 U.S. — 1987)	16
<i>Eastern Publishing & Advertising, Inc., v. Chesapeake Publishing & Advertising, Inc.</i> , 831 F. 2d 488, 492 (4th Cir. 1987)	9
<i>Gatoil (U.S.A.), Inc. v. Forest Hill State Bank, et al.</i> , CA No. JH 84-873 (D. Md. 1986)	9
<i>Illinois Department of Revenue v. Phillips</i> , 771F. 2d 313 (7th Cir. 1985)	10
<i>International Data Bank, Ltd., v. Zepkin</i> , 812 F.2d 149 (4th Cir. 1987)	9
<i>Mc Nally v. United States</i> , 483 U.S. — (1987), S. Ct. No. 86-234	16
<i>Morgan v. Bank of Waukegan</i> , 804 F.2d 975 (7th Cir.1986)	10
<i>Sedima, S.P.R.L. v. Imrex Company, Inc.</i> , 473 U.S. 479 (1985)	18

<i>Superior Oil Co. v. Fulmer,</i> 785 F. 2d 252 (8th Cir. 1986)	17
<i>U.S. v. Computer Sciences Corp.,</i> 689 F. 2d 1181 (4th Cir. 1982)	13
<i>United States v. Kragness,</i> 830 F. 2d 842 (8th Cir. 1987).....	13
Federal Statutory Provisions:	
18 U.S.C. § 1961 (1) and (5)	12,15
18 U.S.C. § 1962	7
18 U.S.C. § 1964(c)	14
18 U.S.C. § 1341	15
18 U.S.C. § 1343	15
18 U.S.C. § 2343	15

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**PETITION FOR WRIT OF CERTIORARI TO THE
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FOR THE FOURTH CIRCUIT**

To the Honorable, the Chief Justice and
Associate Justices of the Supreme Court of the United
States:

Bill J. Cory, the petitioner herein, respectfully
prays that a writ of certiorari issue to review the
judgment and opinion of the United States Court of
Appeals for the Fourth Circuit entered in this matter
on 31 March 1988.

OPINIONS BELOW

The 31 March 1988 unreported opinion of the Court of Appeals for the Fourth Circuit whose judgment is herein sought to be reviewed is reprinted in attached Appendix A, A-3. The order of the United States District Court for the District of Maryland entered 5 October 1987 is reprinted in Appendix A, A-6. The prior Memorandum and Order of the United States District Court for the District of Maryland filed 21 September 1987 is reprinted in Appendix A, A-8. The Report and Recommendation of the United States Magistrate to the United States District Court for the District of Maryland filed 29 May 1987 is set forth in Appendix A, A-24.

JURISDICTION

The Opinion of the Court of Appeals for the Fourth Circuit was entered 31 March 1988. This Petition is timely under 28 U.S.C. § 2101(e). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C. §§ 1961, 1962, 1964, 1341, 1343, and 2314 are reprinted in relevant part in Appendix B.

STATEMENT OF CASE

This case arises from a claim for damages by the Petitioner against Standard Federal Savings and Loan Association, et al., under the Organized Crime Control Act of 1970, more specifically Racketeer Influenced and Corrupt Organizations (RICO), 18 U.S.C. § 1961 et seq. In January 1983 Standard Federal induced the Public to deposit money in its T-Bill Plus account through advertising by promising to pay depositors a minimum rate of interest based on U.S. Treasury Bill auctions. The Petitioner complied with the T-Bill Plus deposit requirements and was provided a contract of deposit which stated, "The interest rate paid to depositors shall never be less than the average auction discount rate of the 13 week Treasury Bill, established at the latest U.S. Treasury Auction, plus one per cent (1%)." The terms of the contract of deposit contained a most important attraction that interest rates set by

the Board of Directors could be higher, thusly increasing depositors' earnings. The foregoing was additionally guaranteed by separate letter from the Executive Vice President of Standard Federal.

Standard Federal omitted the rate of interest paid on almost all the monthly statements and the T-Bill auction rate was never listed, thusly, the underpayment of interest was not easily detectable. After several unsatisfactory inquiries to Standard Federal, the Petitioner computed the rates of interest paid by Standard, and obtained a listing of the weekly T-Bill auction discount rates from the U.S. Department of the Treasury. A comparison of these interest rates showed that T-Bill Plus depositors were underpaid interest 36 out of the 40 monthly pay periods considered, and that on occasion the interest rate paid was almost 2% below the minimum interest rate promised in the contract of deposit. Depositors have been constantly underpaid earned interest by Standard since 1983 to the present time. Although Standard had been in business since 1966 to amass

assets of \$373 million (Form 10-K, FY 1982), per share earnings increased astronomically and over \$600 million (Form 10-Q, Sep. 1985) was added to almost triple its assets in 3 years, the same time period covered by the Complaint.

This suit, filed on 8 May 1986 in the United States District Court for the District of Maryland under the provisions of RICO (18 U.S.C. §§ 1961-68), alleged the respondents violated 18 U.S.C § 1962(a), (b), (c), and (d) (App. B-2) by using the U.S. Mail (18 U.S.C. § 1341, App. B-4) and wire (18 U.S.C. § 1343, App. B-4) to defraud depositors of rightfully earned interest on depository accounts; and to transfer these fraudulently gained funds through interstate commerce in violation of 18 U.S.C. § 2314 (App. B-5). State law violations were alleged under pendent Code of Maryland, Article Financial Institutions, other statutes, and common laws. The first Amended Complaint seeking certification as a class action was filed on 18 June 1987. Upon assignment by the district court, the United States Magistrate filed his Report

and Recommendation (App. A-24) on 29 May 1987 which set forth that the Complaint should be dismissed for failure to allege a pattern of racketeering activity and a distinct person/enterprise relationship. The district court adopted the Magistrate's Report and Recommendation on 21 September 1987 (App. A-8) stating that only one act, the nonpayment of correct interest, does not constitute a pattern of racketeering under RICO, and that the person/enterprise relationship has not been satisfied. The first Amended Complaint was not noticed in the district court's 21 September 1987 memorandum, but was rejected by Order of 5 October 1987 (App. A-6) for the same reasons as the Complaint and for lack of timeliness. On 31 March 1988, the United States Court of Appeals for the Fourth Circuit affirmed the district court's decision and stated that the alleged conduct failed to constitute a RICO pattern, but did not address the district court's enterprise findings. The Petitioner now seeks certiorari to the United States Court of Appeals for the Fourth Circuit.

REASONS FOR GRANTING THE WRIT

- L. The "RICO pattern" should be Standardized among the Federal Circuits.

The notion propounded by the courts of the Fourth Circuit that multiple criminal episodes are necessary to state a claim upon which relief can be granted is contrary to RICO statutory requirements. The Fourth Circuit courts have used the terms scheme/episode and continuity/relatedness as being reciprocally connected, and applied various interpretations to these relationships which cause unfair dismissal of person instituted civil RICO claims.

The "pattern of racketeering activity" governs a cause of action under RICO by encompassing the total violation since it is contained in § 1962(a), (b), (c), and conspiracy (d) is contingent upon (a), (b), and (c) (App. B-2). The Petitioner alleged forty-three (43) acts using wire and the U.S. Mail to defraud T-Bill Plus depositors. These acts on the part of Standard Federal, et al., included: (a) false advertising to induce the Public to entrust and deposit money; (b) a

false promise to pay rates of interest as specified within the terms of the contract of deposit; (c) the issuance of an offer using false pretenses by guaranteeing the interest rates to be paid; (d) repeated attempts to conceal the fraud by failing to list and supply interest information upon request and (e) thirty-six underpayments of earned interest paid monthly over a forty (40) month period of time. All forty-three (43) acts of mail and wire fraud were necessary for fruition of the scheme. The fraud has continued and currently T-Bill Plus depositors are being underpaid interest. This district court stated, "This court finds that there is only one act complained of, namely, the nonpayment of the correct interest rate . . . This one act . . . does not establish the pattern of racketeering activity necessary for plaintiff to prosecute a civil RICO case" (App. A-13). The Fourth Circuit affirmed, ". . . the complaint still failed to charge the kind and degree of continuous engagement in criminal conduct required to constitute a RICO 'pattern'" (App. A-4). The Petitioner points out that, in addition to the

numerous fraudulent acts which caused him injury, he had requested certification as a class action in his first Amended Complaint which necessarily included an unspecified number of victims and additional criminal acts.

In *Eastern Publishing & Advertising, Inc., v. Chesapeake Publishing & Advertising, Inc.*, 831 F. 2d 488, 492 (4th Cir. 1987), and *International Data Bank, Ltd., v. Zepkin*, 812 F. 2d 149 (4th Cir. 1987), the Fourth Circuit held that the alleged fraudulent acts were part of a single limited scheme to defraud and that a pattern of racketeering activity had not been alleged. The U.S. Magistrate's Report and Recommendation submitted in this case references *Gatoil (U.S.A.), Inc., v. Forest Hill State Bank, et al.*, CA No. JH 84-873 (D. Md. 1986) (unreported) which also held that one criminal episode did not constitute a "RICO pattern." Several Circuits have not incorporated the multiple episode theory in their findings. In the Third Circuit case, *Agency Holding Corp. v. Malley-Duff & Associates*, 107 S. Ct. 2759

(1987), the RICO claim was supported by two alleged incidents: (a) Crown Life, et al., acquired various crown life agencies by false and fraudulent pretenses, and (b) Crown Life obstructed justice during the course of discovery. In *Bank of America v. Touche Ross & Co.*, 782 F. 2d 971 (11th Cir. 1986) five banks sued under civil RICO alleging nine acts of wire and mail fraud over a three year period. The Eleventh Circuit stated that the wire and mail fraud acts comprised a single scheme, and held that the pattern of racketeering activity requirement has been sufficiently alleged. The Seventh Circuit in *Morgan v. Bank of Waukegan* 804 F. 2d 975 (7th Cir. 1986), stated that "... the mere fact that the predicate acts relate to the same overall scheme or involve the same victim does not mean that the acts automatically fail to satisfy the pattern requirement." In *Illinois Department of Revenue v. Phillips*, 771 F. 2d 312 (7th Cir. 1985), the Seventh Circuit concluded a pattern of racketeering has been sufficiently alleged. "In *Phillips*, the defendant mailed nine separate fraudulent

state sales tax returns to the state over a nine-month period. These mailings were clearly distinct transactions ongoing over a period of time: each tax return was a separate lie and resulted in a separate underpayment, independent of the other lies and underpayments." See *Morgan* at 976. The Courts of the First, Second, Third, Seventh, Ninth, and Eleventh Circuits do not ascribe to the multiple episode requirement.

The Petitioner contends that in a different Circuit, the fraudulent acts alleged in this suit would have ascribed a RICO pattern of racketeering activity. Until this Honorable Court ameliorates the RICO pattern differences between Circuits, the ends of justice standard cannot be met uniformly and fairly throughout the federal court system.

II. The Court's "pattern" Requirement Conflicts with the Terms of the RICO Statute.

A pattern is any object or act which is sufficiently defined so it can be used as a guide to duplicate or repeat itself. The RICO "pattern of racketeering activity" requires the pattern to be used at least one time to repeat itself, thereby establishing at least two acts of racketeering activity as set forth in § 1961(5) (App. B-2). RICO is a criminal statute which sets forth the requirement for only one pattern of racketeering activity. This single racketeering pattern requirement is supported by the commission of felonious acts listed in 1961(1) (App. B-1), and is the "one and the same" requirement whether the suit is criminal or civil in nature. Further, this RICO pattern is established by all overt criminal acts committed by the wrongdoer, rather than as a consequence of tabulating harmful acts against the victim as seemingly the courts of the Fourth Circuit have held and used to dismiss civil RICO suits.

In the Fourth Circuit the courts have found that one victim limits the criminal activity to a single episode, which in turn fails to establish a RICO pattern. When one contemplates crimes more serious than fraud, this one-victim, one-episode theory fails to survive the intent of RICO. If the one-victim, one-criminal episode theory is consistently applied, the Attorney General would be unable to prosecute either civil or criminal actions where there was only one victim, even though that victim had been injured by several criminal acts.

However, the Fourth Circuit and other courts promulgating the one-victim, one-episode theory vacilate by not applying the theory evenly or, in some cases, circumvent their previous findings by classifying events in a different manner. In *U.S. v. Computer Science Corp.*, 689 F. 2d 1181 (4th Cir. 1983), thirty-six acts of mail and wire fraud supported a claim under § 1962(c) where the only victim was the General Services Administration. Only one scheme existed, namely, the attempt of one corporation to defraud the

United States. The Eighth Circuit, in *United States v. Kragness*, 830 F. 2d 842 (8th Cir. 1987), found three separate schemes: (a) importing marijuana into La Junta; (b) importing marijuana into the Phoenix area; and (c) a cocaine-and-quaalude scheme. Had *Kragness* been a person instituted civil RICO complaint, the court may have found a single scheme; i.e., the repeated act of unlawfully importing illegal drugs to carry out the same criminal activity. Such a finding would have been consistent with the district court's reasoning in this case, i.e., the one act of nonpayment of the correct interest rate was repeated to carry out the same criminal activity (App. A-13).

A person has the right to sue under § 1964(c) (App. B-3) if he has been harmed in his business or property by reason of a violation of § 1962. Only one injury is required and all criminal acts conducted by the perpetrators may be used to establish a pattern of racketeering activity. However, a person seldom has standing to complain of or prove criminal acts against others, and necessarily must establish the pattern of

racketeering against himself as the victim. Certainly lower courts have unfairly placed an added restriction on person instituted RICO suits by finding that if there is only one victim, only one criminal episode can result. The terms of the statute set forth the requirements for only one RICO pattern. Severe criminal acts against a victim can be postulated, and if this same RICO pattern is uniformly applied, the Attorney General would be prohibited from bringing a RICO charge.

III. The "Pattern of Racketeering Activity" does not Require a Scheme or Episode.

The terms of RICO S S 1961-68, do not contain a requirement for either a scheme or criminal episode. The felony acts necessary to be committed in support of a RICO conviction, S 1961(l) (App. B-1), i.e., S 1951 (relating to interference with commerce), S 1503 (relating to obstruction of justice), etc., similarly lack any such scheme or episode requirements. Three of those criminal acts listed describe the use of a

scheme, namely, S 1341 (mail fraud) S 1343 (wire fraud), and S 2314 (relating to stolen property) (App. B-5). S 2314 states in pertinent part:

"whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen . . . Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported . . ."

S 2314 does not incorporate a scheme or intent to devise a scheme in each instance as a necessary element of proof for conviction. The acts of transporting stolen money, counterfitted securities, forged checks, or money gained by false pretenses are sufficient standing alone.

S 2314 clearly indicates that a conviction may be supported using the false pretenses clause. If S S 1341 and 1343 are read in the light of S 2314, these statutes also fail to state that a scheme is necessary in each instance as an element of proof. Money or property

gained by false pretenses sent by mail or wire is sufficient. See *Carpenter v. United States*, 484 U.S. ____ (1987) S. Ct. No. 86-422; *McNally v. United States*, 483 U.S. ____ (1987), S. Ct. No. 86-234. Significantly, any scheme used is necessary only to accommodate a conviction under the felony statute containing the scheme, § 1961(1). The next most likely place to find a scheme requirement is in § 1962(d) which prohibits conspiracy. However, § 1962(d) only requires an agreement between parties to violate subsections (a), (b), or (c) of this same section. Therefore, from the foregoing, it is evident that a pattern of racketeering activity does not contain a requirement for a scheme, and, in fact, such a scheme cannot be found as an essential requirement in any part of § 1962. Through evolution in the courts, the scheme criteria has erroneously become a RICO pattern requirement, even to the point of requiring multiple schemes.

Several Circuits have applied the criteria that the RICO pattern requirement was designed "to target

offenders who engage repeatedly in racketeering activities." *Superior Oil Co. v. Fulmer*, 785 F. 2d 252 (8th Cir. 1986). In this same vein, a pattern of racketeering activity that was allowed to flow from a single, limited scheme would undermine the intent that RICO serve as a weapon against ongoing unlawful activities whose scope and persistence pose a special threat to social well-being. *International Data Bank, Ltd., v. Zepkin*, 812 F. 2d 149 (4th Cir. 1987). In *Superior Oil* at 257, the Eighth Circuit stated:

"there was not proof that [defendants] had ever done these activities in the past and there was no proof that they were engaged in other criminal activities elsewhere."

The foregoing is a far departure from the accepted and usual course of judicial proceedings, and would, with certainty, doom a person instituted civil RICO claim.

Apparently these courts have supplied the connotation that repeated racketeering activities signify offenders who are engaged in criminal activities elsewhere or who have been engaged in criminal activities in the past. Racketeering activity

is defined in S 1961 (l) and repetition of those acts listed should be sufficient without any further hint of other criminal involvement. Since *Sedima, S.P.L.Y. v. Imrex Company, Inc.*, 473 U.S. 479 (1985), this requirement has taken the place of a racketeering injury and prior conviction. This reasoning has now given rise to the multiple episode concept which has no more validity than the requirements put to rest in *Sedima*. S 1964(c) requires that injury need only be proven against the complainant.

The issue is further confused because the courts promulgating the single episode theory have used scheme and episode interchangeably, and applied various definitions. Although the RICO statute does not mention episode or scheme, the confusion may have arisen from *Sedima*, footnote 14, concerning the continuity plus relationship needed to produce a pattern. In the Fourth Circuit, continuity is not obtained by continuous unlawful acts committed by the perpetrator against one or more victims, but rather continuity must be demonstrated by acts that take

place in separate criminal episodes. A definition of continuity that is to be achieved by acts against different victims or acts spaced by undefined periods of time that are broken in sequence would seemingly employ Webster's definition of discontinuous, unless these acts are assigned to the wrongdoer to satisfy the definition of continuity.

A person may not have standing to prove criminal acts in separate episodes or the acts may not satisfy the court's interpretation of the relatedness requirement. Acts taking place in the same criminal episode are related but fail the continuity requirement using the definition applied by the Courts, resulting in a Catch-22 situation.

The scheme/episode and continuity/relatedness terminology have spawned so many various interpretations to have placed the RICO pattern requirement in severe jeopardy. These words have not been substantially defined or treated so as to insure a uniform RICO pattern requirement for all Circuits. In the case at hand, the courts found only one act

present, i.e., that of not paying the correct interest rate, even though the Board of Directors was required to set the interest rate to be paid each month under both federal and Maryland laws, and monthly payments were made.

The statute should be read in its plain text or the criminal acts conducted by the perpetrators used, in their concrete form, to define a pattern of racketeering activity. If a scheme is ever required, it should be used only in the proof of the statute in which it appears, and not as a part of the requirement to prove a pattern of racketeering activity.

The lack of uniformity among Circuits in setting the RICO pattern requirement demands the attention of this Honorable Court to set the standards for "a pattern of racketeering activity" in the best interests of justice. The Fourth Circuits disparate treatment of federally prosecuted and person instituted RICO claims has placed an unduly burdensome restriction on citizen complaints. The concept that a person must prove past criminal conduct, or ongoing criminal

conduct elsewhere, against an offender to establish a RICO claim is a serious departure from accepted judicial proceedings. The Petitioner alleged forty-three criminal acts which took place over a forty-month period, and sought class action representation. Standard Federal is continuing to underpay earned interest to current depositors. This was not a single limited scheme to defraud as decided by the courts of the Fourth Circuit, but on ongoing unlawful action encompassing a large number of victims. The "pattern" definition found in 18 U.S.C. § 3575(e) requires the assessment of an excessive number of variables as to degree of sufficiency, and simply is unworkable. This Honorable Court should set the standards for a pattern of racketeering activity to insure that person instituted civil RICO claims receive the same equal and uniform treatment in all Circuits.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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(703) 938-3589

11 MAY 1988

APPENDIX A

NOTICE OF ISSUANCE OF MANDATE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

April 21, 1988

TO: U. S. District Court for the
District of Maryland at Baltimore

RE: 87-3767 Cory v. Standard Federal
CA-86-1449

HEREWITH IS THE MANDATE OF THIS COURT IN
THE ABOVE-ENTITLED APPEAL. The certified
judgment and original record on appeal are returned
only to the district court/agency.
Enclosures:

- X Opinion and Certified copy of the
judgment
- Bill of costs form
- X Original record on appeal consisting of
- 1 Volumes of pleadings
- _____ Volumes of transcripts
- _____ Volumes of exhibits
- _____ Volumes other
- 1 TOTAL VOLUMES

— The record will be returned at a later date.

— The record was never transmitted by the D/Ct.

— Other _____

Please acknowledge receipt of these documents on the enclosed copy of this notice.

Clerk JOHN M. GREACEN,

By: SANDRA TAYLOR

Sandra Taylor
Deputy Clerk

Copies of this notice forwarded to:

Bill J. Cory
David Machanic, Esq.
Joan Langworthy Loizeau, Esq.

"UNPUBLISHED"

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 87-3767

BILL J. CORY

Plaintiff - Appellant

v.

MARVIN R. LANG; ROBERT W. ZAUGG;
STANDARD FEDERAL SAVINGS BANK

Defendants - Appellees

Appeal from the United States District Court for the
District of Maryland, at Baltimore. Joseph C. Howard,
District Judge. (C/A No. 86-1449)

Submitted: February 29, 1988 Decided: March 31,
1988

Before HALL, SPROUSE, ERVIN, Circuit Judges.

(Bill J. Cory, Appellant Pro Se. David Machanic,
Warren L. Miller, Joan Langworthy Loizeaux, Pierson,
Ball & Dowd, for Appellees.)

PER CURIAM:

Bill J. Cory, a Virginia resident, appeals from the district court's dismissal without prejudice of his complaint, seeking civil RICO liability pursuant to 18 U.S.C. §§ 1961, et seq. Cory's complaint alleged that Standard Federal had committed a "pattern" of racketeering activity by allegedly underpaying him interest on his T-bill Plus account 36 times over a forty month period. We affirm.

The district court properly found that Cory had failed to allege a "pattern" of racketeering activity. Even assuming Cory sufficiently alleged that the defendants constituted a "enterprise" that perpetrated a fraudulent scheme against him, the complaint still "failed to charge the kind and degree of continuous engagement in criminal conduct required to constitute a RICO 'pattern.'" Eastern Publishing & Advertising, Inc. v. Chesapeake Publishing & Advertising, Inc., 831 F.2d 488, 492 (4th Cir. 1987). See International Data Bank, Ltd. v. Zepkin, 812 F.2d 149 (4th Cir. 1987).

We dispense with oral argument because the dispositive issues have recently been decided authoritatively.

AFFIRMED

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

October 5, 1987

Mr. Bill J. Cory
Apt. 204
2574 Chain Bridge Road
Vienna, Virginia 22180

Warren L. Miller, Esq.
1200 18th Street, N.W.
Suite 1000
Washington, D.C. 20036

Re: Cory v. Standard Federal Savings and
 Loan Association
 Civil No. JH-86-1449

Gentlemen:

The Court's Memorandum dated September 21, 1987 states that plaintiff had failed to amend his complaint. Actually, plaintiff did file an amendment after the Magistrate issued his Report and Recommendation. Coming after the Report, however, such an amendment is untimely and of no effect. Furthermore, the "amendment," as the initial complaint, fails to state a cause of action.

The Court's Memorandum is, therefore, amended to strike the following sentence from part II on page 7: "Also, plaintiff still has not come forward with the amendment even after the cancelled hearing."

Notwithstanding the informal nature of this letter, it is an order in this case.

Very truly yours,

Joseph C. Howard

JCH:dp
Original: Court file
Copies: Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BILL J. CORY :
V. : CIVIL NO. JH-86-
1449

STANDARD FEDERAL
SAVINGS AND LOAN :
ASSOCIATION, ET AL

MEMORANDUM

Plaintiff, Bill J. Cory, filed a *pro se* complaint pursuant to 18 U.S.C § § 1961-1968, the Racketeer Influenced and Corrupt Organizations [RICO] statute, naming as defendants Standard Federal Savings and Loan Association [Standard], Marvin R. Lang, and Robert W. Zaugg. Defendant Standard allegedly guaranteed interest on plaintiff's money market account at the rate of 1% over the three month U.S. treasury bill auction rate so long as the account balance exceeded \$2,500. Plaintiff contends that he did not receive the guaranteed interest rate, even though he maintained the minimum balance. In his complaint, plaintiff claims that defendants engaged in a pattern of racketeering activity through the

commission of wire and mail fraud in violation of 18 U.S.C. § 1962(c). As a result, Mr. Cory claims compensatory damages in the amount of \$200,000 and punitive damages in the amount of \$300,000.

Pending before the Court is Magistrate Klein's Report and Recommendation on nine motions: the motion to dismiss of defendants Standard and Lang, defendant Zaugg's motion to dismiss (which incorporated defendant's Standard and Lang's motion to dismiss by reference); plaintiff's motion for judgment; plaintiff's motion to compel answers; defendant Lang's motion for Rule 11 sanctions; plaintiff's motion for default judgment; plaintiff's motion to order matter admitted; plaintiff's motion for summary judgment; and plaintiff's motion to amend the complaint.

I.

Magistrate Klein recommended that defendant Standard's motion to dismiss be granted. This recommendation is based on two grounds.

A.

Plaintiff must first demonstrate relatedness and continuity in order for a complaint to be actionable under the RICO statute. *Sedima, S.P.R.L. v. Imrex Company, Inc.*, 53 U.S.L.W. 5034, 5038 n.14 (July 1, 1985). In *Sedima*, the Supreme Court recognized that two acts do not necessarily establish the required continuity and "pattern of racketeering activity." *ID.*

District Courts in the Fourth Circuit hold that the racketeering activities must occur in different criminal episodes to fulfill the continuity requirement in *Sedima*. *Forstmann v. Culp*, 648 F.Supp. 1379, 1388 (M.D.N.C. 1986); *HMK Corp. v. Walsey*, 637 F.Supp. 710, 712 n. 2 (E.D. Va. 1986). Thus, continuity "presumes repeated criminal activity, not merely repeated acts to carry out the same criminal activity." *Forstmann v. Culp*, 648 F.Supp. at 1388 n.9 (quoting *Northern Trust Bank/O'Hare N.A. v. Inryco, Inc.*, 615 F.Supp. 828, 831 (N.D. Ill. 1985) (emphasis in original)). The requirement of criminal episodes, in fact, is the general consensus among the courts.

Forstmann v. Culp, - 648 F.Supp. at 1388 (quoting *Frankart Distributors, Inc. v. RMR Advertising*, 632 F.Supp. 1198, 1200 (S.D.N.Y. 1986)). In the present case there are only repeated acts which carry out the same allegedly criminal activity. All of the criminal acts alleged by Mr. Cory arose in the course of one single episode and were related to only one activity, that is, omissions with regard to the interest rate offered and paid by Standard. Therefore, these acts do not constitute a pattern of different criminal episodes as required under RICO.

Plaintiff objects to this recommendation on the ground that the requirement of the criminal episode is an incorrect interpretation of the continuity requirement of the statute, and cites *Morgan v. Bank of Waukegan*, 804 F.2d 970 (7th Cir. 1986) to support his position. *Morgan* used the phrase "an overall scheme," *Id.* at 976, instead of criminal episode, and plaintiff asserts that a scheme is all that is required to constitute continuity for the purposes of the racketeering statute. The overall scheme in *Morgan*,

however, consisted of distinct acts of mail fraud, some of which were related to two separate foreclosure sales that occurred years apart. *Id.* Even if this Court were to adopt the phrase overall scheme, the facts of the present case involving the nonpayment of a guaranteed rate of interest do not establish the type of overall scheme which concerned the court in *Morgan*.

Plaintiff also objects to this interpretation of the statute claiming that it reads the RICO statute too narrowly. In support of his position, Mr. Cory cites *Sedima*. Although *Sedima* did hold that the Second Circuit had construed the racketeering statute too narrowly, that holding struck down the Second Circuit's requirement of an "additional, amorphous 'racketeering injury'", *Sedima*, 53 U.S.L.W. at 5038 (emphasis added). The present case deals with the entirely separate requirement of a pattern of activity, see, 18 U.S.C. § 1961(5).

In addition, Mr. Cory objects to the Magistrate's recommendation maintaining that *American National Bank and Trust Co. v. Harco, Inc.*, 473 U.S. 606 (1985)

is controlling. Plaintiff asserts that Standard's underpayment of interest in the present case is analogous to the excessive interest charges addressed in *Harco*. In *Harco*, the continuity requirement was satisfied because the case dealt with several loans made by the defendants, see, *Harco v. American National Bank and Trust Co.*, 577 F.Supp. 111, 112 (discussion of facts in district court opinion). In the present case, the complaint addresses plaintiff's single money market account.

Finally, Mr. Cory objects to the Report and recommendation arguing that defendants cheated him each month on dollar amount computed for interest payments; therefore, the acts of each month establish the continuity requirement. This Court finds that there is only one act complained of, namely, the nonpayment of the correct interest rate. This one act was repeated to carry out the same criminal activity, but it does not establish the pattern of racketeering activity necessary for plaintiff to prosecute a civil RICO case.

B.

Magistrate Klein also recommended defendant's motion be granted based upon the requirement of an enterprise for a violation of the RICO statute, see, *Sedima* at 5038-39. Plaintiff's complaint alleges that Standard is the enterprise involved in the alleged racketeering activity. Courts in this Circuit have held that the enterprise involved in a RICO case must be separate from the persons conducting the violating activity, and the enterprise cannot be a defendant in a suit brought under 18 U.S.C § 1964. *United States v. Computer Sciences Corp.*, 689 F.2d 1181, 1190 (4th Cir. 1982), cert. denied, 459 U.S. 1105 (1983). In the present case, Standard is both the alleged enterprise and the defendant; plaintiff therefore, has failed to allege the involvement of a proper enterprise.

Mr. Cory objects to the Magistrate's Recommendation, arguing that *Computer Sciences* is distinguishable from the present case. Specifically, Mr. Cory contends that *Computer Sciences* is a criminal case, and not applicable to this civil action.

The courts, however, have consistently applied the holding of *Computer Sciences* to civil RICO cases. See e.g., *Nunes v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 609 F.Supp. 1055, 1065 (D. Md. 1985); *Burgon v. Heinhold Commodities, Inc.*, 646 F.Supp. 360, 363 (E.D. Va. 1986); *Witt v. South Carolina National Bank*, 613 F.Supp. 140, 143-44 (D.S.C. 1985); *Tryco Trucking Co. v. Belk Store Services, Inc.*, 608 F.Supp. 812, 817 (W.D.N.C. 1985); *Umstead v. Durham Mills, Inc.*, 592 F.Supp. 1269, 1271 (M.D.N.C. 1984); *In re Action Industries Tender Offer*, 572 F.Supp. 846, 849 (E.D. Va. 1983). This Court will do the same and holds that plaintiff has not alleged racketeering conduct on the part of an enterprise for this action to be maintained pursuant to the RICO statutes.

Plaintiff also objects to this recommendation on the basis that Standard is not the enterprise, as stated in his complaint, but instead it is Standard's parent company, Standard Holding Company. The Court notes that this substitution cannot now be made by way of objections. Even if it were properly alleged in Mr.

Cory's complaint, this would not save the lack of continuity and pattern of racketeering activity. Finally, plaintiff's assertion that *respondeat Superior* and agency laws should apply is dismissed as frivolous.

Plaintiff has failed to allege a claim under the RICO statute and therefore, the defendant's motion to dismiss is granted. The granting of defendant's motion to dismiss renders moot plaintiff's motion to compel answers, defendant Lang's motion for Rule 11 sanctions, plaintiff's motion for default judgment, plaintiff's motion to order matter admitted, and plaintiff's motion for summary judgment.

II.

There still remains plaintiff's motion to amend his complaint as well as plaintiff's motion for judgment.

Mr. Cory failed to include the amended complaint or describe the amendment he wished to make. Because the Court cannot speculate as to what plaintiff's amendment would be, Magistrate Klein recommended that the motion to amend be denied.

Plaintiff objects to this recommendation on the ground that he was the only one to appear at a cancelled motions hearing. A hearing, however, is not required for a motion to amend a complaint. Local Rule 6(j). Also, plaintiff still has not come forward with the amendment even after the cancelled hearing. Accordingly, plaintiff's motion to amend his complaint is denied.

In his motion for judgment, Mr. Cory requested reimbursement for the cost of personal service on defendant Zaugg, pursuant to Fed.R.Civ.P. 4(c)(2)(D). The Magistrate found that:

"[t]he record reflects the process was issued pursuant to Fed.R.Civ.P. 4(c)(2)-(C)(ii) on May 22, 1986, and that the summons for defendant Zaugg was returned unexecuted on June 9, 1986 because Mr. Zaugg was not at the address listed. (See papers filed behind Paper No. 4). A private process server was appointed on July 10, 1986 (Paper No. 5), and service was made on defendant Zaugg at a different address on July 29, 1986. (Paper No. 10). In *Henry v. Glaize Maryland Orchards, Inc.*, 103 F.R.D. 589 (D.Md. 1984), this Court held

that 'a defendant must actually receive the Rule 4(c)(2)(C)(ii) mailing and must fail to react to the form 18-A notices in a timely fashion, before Rule 4(c)(2)(D) becomes applicable.' *Id.* at 590. In the instant case, defendant Zaugg did not receive the Rule 4(c)(2)(C)(ii) mailing and the summons was therefore returned unexecuted. Thus, in accordance with *Henry*, Rule 4(c)(2)(D) does not apply, and plaintiff's motion for judgment should be denied."

Magistrate's Report and Recommendation at 4. This Court agrees with the Magistrate's Recommendation.

Mr. Cory objects to this recommendation arguing that the Clerk's Office or the U.S. Marshal made an error, and the responsible agency should reimburse plaintiff. Mr. Cory, however, incorrectly assigns responsibility to the Clerk or U.S. Marshal. Pursuant to Fed.R.Civ.P. 4(a) it is the "plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons . . ." . Thus, Mr. Cory's objection is without merit and the motion for judgment is denied.

III.

Plaintiff has also raised objections not directly related to the Magistrate's recommendations.

First, Mr. Cory's request for class action certification is denied; it is improperly raised in his objections.

Next, plaintiff objects to the Magistrates' finding that Mr. Cory maintained a balance in excess of \$2,500 for the majority of interest periods. Plaintiff claims that he maintained the \$2,500 balance for all of the interest periods. Mr. Cory has simply misread the Magistrate's recommendation. The clause "for the majority of interest periods," Magistrate's Report and Recommendation at 2, modifies how often plaintiff did not receive the guaranteed interest rate; the clause does not modify the account balance.

Finally, plaintiff attempts to assert in his objections a claim based on Maryland State law. Because this Court has rejected plaintiff's RICO complaint, and because there is no diversity, this Court has no jurisdiction to hear the state law claim,

see 28 U.S.C. §§ 1331, 1332. In any event, the claim is improperly raised in plaintiff's objections to the Magistrate's Report and Recommendation.

Accordingly, defendants Standard, Lang and Zaugg's motions for dismissal are granted, and all other motions are denied.

The Court will enter a separate Order.

Joseph C. Howard
United States
District Court Judge

Dated: 9/21/87

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BILL J. CORY

:

v.

: CIVIL NO. JH-86-
1449

STANDARD FEDERAL
SAVINGS AND LOAN
ASSOCIATION, ET AL.

:

ORDER

Accordingly, it is this 21st day of Sept.,
1987, by the United States District Court for the
District of Maryland,

ORDERED:

1. That the Report and Recommendation of
Clarence E. Goetz, Chief United States Magistrate for
the District of Maryland, BE, and the same hereby IS,
ADOPTED;

2. That the motion to dismiss of defendants Standard, Lang, and Zaugg BE, and the same hereby IS, GRANTED;¹

3. That plaintiff's motion for judgment BE, and the same hereby IS, DENIED;

4. That plaintiff's motion to compel answers BE, and the same hereby IS, DENIED;

5. That defendant Lang's motion for Rule 11 sanctions BE, and hereby IS, DENIED;

6. That plaintiff's motion for default judgment BE, and hereby is, DENIED;

7. That plaintiff's motion to order matter admitted BE, and hereby IS, DENIED;

8. That plaintiff's motion for summary judgment BE, and hereby IS, DENIED;

¹ Plaintiff's RICO count is dismissed without prejudice, specifically for the requirement that a RICO complaint allege a separate person and enterprise, as well as the requirement of continuity.

9. That plaintiff's motion to amend his complaint, BE, and hereby IS, DENIED; and

10. That the Clerk shall mail copies of the foregoing Memorandum and of this Order to the plaintiff and counsel of record.

Joseph C. Howard
United States
District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BILL J. CORY

:

v.

CIVIL ACTION NO.:
JH-86-1449

STANDARD FEDERAL
SAVINGS AND LOAN
ASSOCIATION, ET AL

MAGISTRATE'S REPORT AND RECOMMENDATION

On May 8, 1986, plaintiff, Bill J. Cory, filed a pro se complaint pursuant to 18 U.S.C § 1961 et seq., the Racketeer Influenced and Corrupt Organizations [RICO] statute, naming as defendants Standard Federal Savings and Loan Association [Standard], Marvin R. Lang, and Robert W. Zaugg. Nine motions are presently pending: (1) the motion to dismiss of defendants Standard and Lang filed June 18, 1986 (Paper No. 3) (2) defendant Zaugg's motion to dismiss filed August 7, 1986 (Paper No. 8); (3) plaintiff's motion for judgment filed September 8, 1986 (Paper No. 12); (4) plaintiff's motion to compel answer filed September 8, 1986 (Paper No. 13); (5) defendant

Lang's motion for Rule 11 Sanctions filed September 19, 1986 (Paper No. 14); (6) plaintiff's motion for default judgment filed October 8, 1986 (Paper No. 20); (7) plaintiff's motion to order matter admitted filed October 8, 1986 (Paper No. 21); (8) plaintiff's motion for summary judgment filed November 17, 1986 (Paper No. 24) and (9) plaintiff's motion to amend the complaint filed March 20, 1987 (Paper No. 31). No hearing is deemed necessary. Local Rule 6.

In his complaint, plaintiff contends that, in response to a newspaper advertisement and correspondence, he deposited more than \$2,500 in a money market account with defendant Standard. Plaintiff asserts that defendant Standard guaranteed interest on the account at the rate of 1% over the three month U. S. treasury bill auction rate so long as the account balanced exceeded \$2,500. Plaintiff states that, even though he always maintained a balance in excess of \$2500, for the majority of interest periods, he did not receive the guaranteed interest rate. He asserts that the defendants engaged in a

pattern of racketeering activity through the commission of wire and mail fraud in violation of 18 U.S.C. § 1962(c). As a result, plaintiff claims compensatory damages in the amount of \$200,000 and punitive damages in te amount of \$300,000.

The Supreme Court has recently held that "[a] violation of § 1962(c)... requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. . . . [T]he plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation" *Sedima, S.P.R.L. v. Imrex Company, Inc.*, 53 U.S.L.W. 5034, 5038-39 (July 1, 1985). (footnote omitted). It is clear that plaintiff is claiming that Standard is the enterprise involved in the alleged racketeering activity. Courts in the Fourth Circuit have held that the enterprise being operated must be separate from the persons conducting the violating activity, and, therefore, the enterprise cannot be a defendant in a suit brought under 18 U.S.C. § 1964. *United States v. Computer*

Sciences Corp., 689 F.2d 1181, 1190 (4th Cir. 1982), cert. denied, 459 U.S. 1105 (1983); *Witt v. South Carolina National Bank*, 613 F.Supp. 140, 143 (D.S.C. 1985); *Umstead v. Durham Hosiery Mills, Inc.*, 592 F.Supp. 1269, 1271 (M.D.N.C. 1984). Thus, it is recommended that defendant Standard's motion to dismiss be granted.

In *Sedima*, the Supreme Court recognized that two acts do not establish a pattern of racketeering activity." *Sedima*, 53 U.S.L.W. at 5038 n. 14. It is necessary to demonstrate continuity and relatedness to show a pattern of activity. *Id.* This Court has interpreted *Sedima*'s footnote 14 to require the racketeering activities to occur in different criminal episodes to fulfill the continuity requirement. See *Gatoil (U.S.A.), Inc. v. Forest Hill State Park*, Civil Action No. JH-84-873, slip op. at 6 (May 2, 1986); *H.A. Knott Limited, Inc. v. Intelligence Interlink Corp.*, Civil Action No. R-85-4213, slip op. at 2-3 (Feb. 27, 1986) (copies attached hereto). In *Gatoil*, the acts complained of all arose out of a joint venture

relationship between the parties. Similarly, the acts in Knott were the result of the fraudulent collection of a note. In the instant case, there is only one act complained of: the nonpayment of a guaranteed rate of interest on a type of bank account. This one act does not establish a pattern of racketeering activity necessary to prosecute a civil RICO case. Therefore, the motion to dismiss of defendants Lang and Zaugg should be granted.

The foregoing recommendations render moot plaintiff's motion to compel answer (Paper No. 4), defendant Lang's motion for Rule 11 sanctions (Paper No. 14), plaintiff's motion for default judgment (Paper No. 20), plaintiff's motion to order matter admitted (Paper No. 1), and plaintiff's motion for summary judgment. (Paper No. 24).

In his motion for judgment (Paper No. 12), plaintiff requests reimbursement for the cost of personal service on defendant Zaugg, pursuant to Fed. R. Civ. P. 4(c)(2)(D). The record reflects that process was issued pursuant to Fed. R. Civ. P. 4(c)(2)(C)(ii) on

May 22, 1986, and that the summons for defendant Zaugg was returned unexecuted on June 9, 1986 because Mr. Zaugg was not at the address listed. (See papers filed behind Paper No. 4). A private process server was appointed on July 10, 1986 (Paper No. 5), and service was made on defendant Zaugg at a different address on July 29, 1986. (Paper No. 10). In *Henry v. Glaize Maryland Orchards, Inc.*, 103 F.R.D. 589 (D.Md. 1984), this Court held that "a defendant must actually receive the Rule 4(c)(2)(C)(ii) mailing and must fail to react to the form 18-A notices in a timely fashion, before Rule 4(c)(2)(D) becomes applicable." *Id.* at 590. In the instant case, defendant Zaugg did not receive the Rule 4(c)(2)(C)(ii) mailing and the summons was therefore returned unexecuted. Thus, in accordance with *Henry*, Rule 4(c)(2)(D) does not apply, and plaintiff's motion for judgment should be denied.

On March 20, 1987, plaintiff filed a motion to amend the complaint. (Paper No. 31). However, plaintiff failed to include the amended complaint or

describe the amendment he wished to make. Even after the defendants filed their opposition (Paper No. 32), plaintiff did not come forward to particularize his amendment. Because this Court cannot speculate as to what plaintiff's amendment would be, his motion should be denied.

Accordingly, for the foregoing reasons, it is respectfully recommended that upon the expiry of the time for taking exception hereto, an Order be entered granting the motions to dismiss of defendants Standard, Lang, and Zaugg, denying plaintiff's motion for judgment and motion to amend the complaint, and denying all other pending motions as moot.

DATE: May 29, 1987

DANIEL E. KLEIN, JR.
UNITED STATES
MAGISTRATE

APPENDIX B

FEDERAL STATUTORY PROVISIONS INVOLVED

TITLE 18 U.S.C

In pertinent part:

§ 1961. Definitions

As used in this chapter—

- (1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice) section 1510 (relating to obstruction of criminal investigations) section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering

paraphernalia) section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2314 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to whiteslave traffic), (c) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (d) any offense involving fraud connected with a case under title 11, fraud in sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

(5) "pattern of racketeering activity requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

§ 1962. Prohibited activities

(a) it shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interest or foreign commerce. A purchase of securities on the open market for purposes of investment and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under

this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections¹ (a), (b), or (c) of this section.

(Added Pub. L. 91-452, Title IX § 901(a), Oct. 15, 1970, 84 Stat. 942.)

S 1964. Civil remedies

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

S 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

(June 25, 1948, c. 645, 62 Stat. 763; May 24, 1949, c. 139 S 34, 63 Stat. 94; Aug. 12, 1970, Pub.L. 91-375, S 6(j)(1), 84 Stat. 778.)

S 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

(Added July 16, 1952, c. 879, S 18(a), 66 Stat. 722, and amended July 11, 1956, c. 561, 70 Stat. 523.)

S 2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of \$5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof—

Shall be fined not more than \$10,000 or imprisoned not more than ten years or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

June 25, 1948, c. 645, 62 Stat. 806; May 24, 1949, c. 139, § 45, 63 Stat. 96; July 9, 1956, c. 519, 70 Stat. 507; Oct. 4, 1961, Pub.L. 87-371, § 2, 75 Stat. 802; Sept. 28, 1968, Pub.L. 90-535, 82 Stat. 885.